

## CIVIL REVISION.

*Before Mitter J.*

1931

June 5, 12.

RIVER STEAM NAVIGATION CO., LTD.

v.

JAMUNADAS RAMKUMAR.\*

*Common carriers—Transmission of goods by two carriers in succession—Liability of the two carriers for loss of goods—Special contract—Carriers Act (III of 1865), ss. 3, 6, 8—Code of Civil Procedure (Act V of 1908), s. 115.*

In cases of goods being addressed for delivery to a place beyond the carrier's sphere of business, any special contract, by which he limits his liability so as to protect himself against loss by another carrier to whom the former carrier may have to forward the goods for delivery, must not be inconsistent with the provisions of the Indian Carriers Act.

*India General Navigation and Railway Company, Limited v. Giridharilal Goberdhone Das* (1) explained.

Any condition exonerating the carrier from liability even for the negligence of its servants or agents is void.

*India General Steam Navigation Company v. Joykrishna Shaha* (2) followed.

Where a package declared to contain stationery but in fact containing scheduled articles (as under the schedule to the Carriers Act) exceeding Rs. 100 in value and also non-scheduled articles is lost in transit the value of the lost non-scheduled articles may be recovered by the consignee from the carrier under section 3 of the said Act.

*Flowers v. South-Eastern Railway Company* (3) and *Treadwin v. Great Eastern Railway Company* (4) referred to.

CIVIL RULE obtained by the defendants-petitioners against the plaintiffs under section 115 of the Code of Civil Procedure.

The material facts are stated in the judgment.

*Dhirendralal Kastagir* and *Sudhirkumar Kastagir* for the petitioners.

*Shyamaprasanna Deb* for the opposite party.

*Cur. adv. vult.*

\*Civil Revision, No. 265 of 1931, against the decree of I. . Barhua, Special Subordinate Judge of the Assam Valley Districts, dated Nov. 22, 1930, affirming the decree of P. Singh, Munsif of Dibrugarh, dated Feb. 28, 1930.

(1) (1927) I. L. R. 54 Calc. 430.

(2) (1889) I. L. R. 17 Calc. 39.

(3) (1867) 16 L. T. (N. S.) 329.

(4) (1868) L. R. 3 C. P. 308.

MITTER J. A very strenuous argument has been put forward in this Rule by Mr. Dhirendralal Kastagir, who has appeared for the petitioners. He has said all that could be said in this case for the petitioners, but, notwithstanding this, I am of opinion that this Rule should be discharged.

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The facts lie within a short compass. It appears that Shyamanand Tamsuk Ray delivered six boxes, described as containing stationery, to the River Steam Navigation Co., Ltd. and the India General Navigation and Railway Co., Ltd., who are the petitioners before me, for carriage of those goods from A. S. Ghat Station, *viâ* Chandpur to Tinsukia, a station on the Assam-Bengal Railway, for delivery to Messrs. Jamunadas Ramkumar. The consignor described the goods as stationery in the forwarding note and signed a declaration agreeing to abide by the conditions mentioned in the Forwarding Note. The consignment contained other goods besides stationery and included silk handkerchiefs of the value in excess of Rs. 100 and other gold and silver articles. Each class of such articles was of the value of less than Rs. 100. The articles are excepted articles in the schedule to the Carriers Act.

Four of the six boxes were given to the consignee at Tinsukia. The plaintiff, after a mass of correspondence with the railway company, brought a suit in the Court of the Munsif at Dibrugarh for recovery of the value of the goods in the two boxes and laid the claim at Rs. 440-9, valuing the price of the goods at Rs. 352-9 and claiming the rest as compensation.

The Munsif dismissed the plaintiff's claim for compensation and disallowed the claim of silk handkerchiefs on the ground that they were excepted articles of the value of Rs. 122, in respect of which no declaration was made, and decreed the claim for Rs. 230-9.

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On appeal by the carriers, the Subordinate Judge affirmed the decision of the Munsif and the carriers have obtained the present Rule.

The Assam-Bengal Railway Co. have not been made a party to the suit.

Both the courts have concurrently found that the loss of the goods took place while in transit on the Assam-Bengal Railway and all the six boxes were delivered to the Assam-Bengal Railway—and the loss was due to the negligence of the railway company.

It is argued, on this finding, that the River Steam Navigation Co. are not liable for the price of the goods, as, by condition 11\* of the Forwarding Note, it was stipulated that, in the event of goods being carried by the company's vessels for carriage to destination by other transport administration, the company shall be under no liability for any loss or damage or delay to the goods after they have been handed over to the on-carrying administration. It is argued that, even if the contract with Steam Navigation Co. was an indivisible one, the petitioners are not liable for the loss, because their liability is restricted by the contract, as contained in paragraph 11 of the Forwarding Note, and reliance is placed on a decision, to which I was a party, *viz.*, in the case of *India General Navigation and Railway Company, Limited v. Giridharilal Goberdhone Das* (1) and stress is laid on the following passage in my judgment in the said case: "The law in England is to the effect "that where goods are addressed to a place beyond "the sphere of the carrier's business so that from "another point he must forward them by another "carrier he is responsible for the goods for the whole "journey unless he limits his liability by agreement."

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\*The condition 11 was as follows :—

"In the event of goods booked to be carried by the company's vessel for transshipment for carriage to destination by other transport administration the company shall be under no liability whatsoever for any loss or damage or delay to goods after they have been handed to the on-carrying administration."

(1) (1927) I. L. R. 54 Calc. 430, 440.

This view is undoubtedly subject to the qualification that contract restricting liability is not inconsistent with the Carriers Act (III of 1865). The stipulation in the Forwarding Note, by which the Navigation Co. were to be exonerated from liability, even for the negligence of its servants or agents, is contrary to the provisions of section 8 of the Carriers Act and such a contract is void. It has been so held in the case of *India General Steam Navigation Company v. Joykrishna Shaha* (1). The Assam-Bengal Railway Co. must be treated as agents of the petitioners in the matter of the transport. There was no contract with the consignors and the Assam-Bengal Railway Co., but, by certain arrangement between the petitioners and the Assam-Bengal Railway Co., the goods were to be carried from Chandpur to Tinsukia. The power of limiting liability by special contract can be exercised subject to the limitations imposed by section 8 of the Act. As was pointed out by Sir Lawrence Jenkins C. J., in the case of *British and Foreign Marine Insurance Co., Ltd. v. India General Navigation and Railway Co., Ltd.* (2), the effect of sections 6 and 8 of the Act "is that the "liability of a common carrier for the loss of goods "not being of the description contained in the "schedule may be limited by special contract signed "by the owner save when such loss shall have arisen "from the negligence or criminal act of the carrier "or any of his agents or servants." In this view, the special contract, being in contravention of section 8, cannot be given effect to.

Even in England, it has been held that, where carriers made a contract with their customers that they would not be liable for any loss however occasioned, such a contract was bad and unreasonable and could not be enforced in any part of it: See *Ashendon v. The London, Brighton, and South Coast Railway Company*, (3). I think the portion of

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(1) (1889) I. L. R. 17 Calc. 39. (2) (1910) I. L. R. 38 Calc. 28, 42.

(3) (1880) 5 Ex. D. 190.

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the contract embodied in paragraph 11, which exonerates the steam navigation companies from the negligence of their servants or agents, is bad, both as being unreasonable and as being in contravention of section 8.

The next point taken is that the consignor is guilty of fraud, as it did not give the declaration, in respect of the scheduled articles exceeding Rs. 100 in value, required by the Act and that, therefore, the consignor is not entitled to get the price of the non-scheduled articles, also as the court should refuse all relief where the transaction is vitiated by the fraud of the party seeking relief. There is no foundation for this contention. Under the English law, when a package containing both scheduled and non-scheduled articles is lost, the value of the non-scheduled articles may be recovered, although the value of the scheduled articles (exceeding £10 or £25 in the case of railway companies under the Railway Act of 1921) cannot be recovered: See *Flowers v. South-Eastern Railway Company* (1) and also the case of *Treadwin v. Great Eastern Railway Company* (2). This is also the law in India in case of carriers, who are governed by the Carriers Act, and section 3 of the Carriers Act is clear on the point. Section 3 says that common carrier is not to be liable for the loss of the scheduled articles only. This point fails.

The next point taken is that there were other scheduled articles (each class not being of the value in excess of Rs. 100), but the aggregate value of which exceeds Rs. 100 besides the silk handkerchiefs and the compensation for their loss should not have been allowed. The point was not specifically taken in the written statement, nor before the lower appellate court and I am not prepared to allow it to be raised for the first time in revision. It is argued

(1) (1867) 16 L. T. (N. S.) 329.

(2) (1868) L. R. 3 C. P. 308.

that the point arises on the statements made in the  
plaint. If the point had been taken in the written  
statement some answer might have been forthcoming.  
This point also fails. The Rule is accordingly  
discharged with cost—1 gold mohur.

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*Rule discharged.*

A. K. D.